

**THE SOLICITORS (SCOTLAND) ACT 1980
THE SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL
(PROCEDURE RULES 2008)**

FINDINGS

in Complaint

by

**THE COUNCIL OF THE LAW SOCIETY of
SCOTLAND, Atria One, 144 Morrison Street,
Edinburgh**

Complainers

against

**GORDON WILLIAM TULLOCH MURPHY,
12 Abercromby Place, Stirling**

Respondent

1. A Complaint dated 21 June 2022 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") averring that Gordon William Tulloch Murphy, 12 Abercromby Place, Stirling (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.
2. There was a Secondary Complainer.
3. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. Answers were lodged for the Respondent.
4. In terms of its Rules, the Tribunal appointed the Complaint to be heard on 19 January 2023 and notice thereof was duly served on the Respondent.
5. At the virtual hearing on 19 January 2023, the Complainers were represented by their Fiscal, Breck Stewart, Solicitor Advocate, Edinburgh. The Respondent was present and represented by George Pollock, Solicitor Advocate, Stirling. The Tribunal received a revised Complaint dated 12 January 2023, and an Inventory of Productions for the Complainers. The Respondent's Answers were withdrawn. Parties made submissions.

6. Having given careful consideration to the terms of the Complaint, The Tribunal found the following facts established:-
- 6.1 The Respondent is Gordon William Tulloch Murphy, 12 Abercromby Place, Stirling. His date of birth is 21 August 1950. He was enrolled as a solicitor on the 1 November 1974. He retired from practice on the 31 October 2019. The Law Society's records show he was partner in GWT Murphy & Co between 2 January 1984 until the 9 October 2016 when he became a director of Bell & Craig Limited. He was director there until 10 April 2019 when he became a consultant to the same company before retiring on the 31 October 2019.
- 6.2 The Respondent had over period of years carried out work for the Secondary Complainer and her husband JC Snr. He carried out the conveyancing for the couple's home (Property 1). JC Snr died on the 19 April 2015.
- 6.3 Prior to his death JC Snr expressed his wish that Property 1 remained in the family and not be sold. The couple had one son, JC Jnr, and four daughters. Following JC Snr's death, the daughters indicated they could not meet the financial requirement to take over the house. JC Jnr indicated he was due a lump sum pension award which may provide him with the financial ability to take on the house. At this time the Respondent had not been instructed. There were ongoing family discussions.
- 6.4 The Respondent held the late JC Snr's Trust Disposition & Settlement and land certificate for Property 1. The Respondent opened a file which had a title which referred to the JC Snr Executry. It is not clear from the file when the file was opened, nor which members of the family consulted with Respondent at that time. The Respondent advises the file was opened after meeting with the Secondary Complainer. No terms of business were issued by the Respondent. The first entry on the file appears to be an undated handwritten note, "*Date of death 19 April 2015...Do Notice of title deducing title through the will*".
- 6.5 The Trust Disposition and Settlement was registered by the Respondent in the Books of Council & Session on the 3 September 2015. There is a letter addressed to the Secondary Complainer dated 19 May 2016 advising the Notice of Title had been sent to be registered. In that letter the Respondent refers to a Continuing and Welfare Power of Attorney to be granted by the Secondary Complainer in favour of AD and SC, two of the Secondary Complainer's daughters. He sought instructions that the names of the daughters were correct. The letter also states, "*I can now move on to making arrangement with [JC Jnr]*

regarding the property although I do not know if [JC Jnr] has put his house on the market yet."

The Respondent's file holds a handwritten file entry of a meeting with the Secondary Complainer. It is undated. In light of the final sentence in the preceding paragraph it is presumed the note is of a meeting which took place before the 19 May 2016. It notes *inter alia*,

"[JC Jnr] will put his house on the market & sell & move in with his mother. He will get lump sum in Dec this year...he will put this to the house...£250,000 is price but he is getting a gift of £50,000 and will pay the option money...total up to 11/11/23, S,Security for option....Something in [the Secondary Complainer's] will to allow [JC Jnr and his wife] to stay."

The file note then records JC Jnr's address and contact number.

- 6.6 There is further undated handwritten file note. It is headed "*Notes re the Option Agreement*". The first point is written as "*Option to [JC Jnr] to buy [Property 1] in the period from now until 11 November 2021 at a price of £250,000*". The word "option" is scored through and the words "no sale" are written above and the amount is scored through and £200,000 is written. The second point states that "*In respect of the option [JC Jnr] will pay to [the Secondary Complainer] (i) £50,000 by 31.12.16 and (ii) [blank] by 31.12.21*". The third point is scored through but is written as "*The payments will be treated as payments to account of price so long as he exercises the option. If he does not the money is to remain [the Secondary Complainer's].*" This was a personal note/aide memoire the Respondent made following a telephone conversation with the Secondary Complainer on the 19 May 2016.
- 6.7 The principal instructions to transfer Property 1 to JC Jnr and to draft a minute of agreement came from the Secondary Complainer. JC Jnr considered the Respondent was acting only for his mother.
- 6.8 A further handwritten note appears to be dated 28 July 2016:
"Met with them explaining the term of the documents. The son's address is noted, and the second point is written as "your info".

The meeting lasted 30 minutes.

6.9 The file holds a draft minute of agreement between JC Jnr and the Secondary Complainer which narrates:-

6.9.1 The purchase price of Property 1 was to be the sum of £200,000, however, this is scored through and £150,000 inserted, and

6.9.2 A Standard Security to be granted by the Secondary Complainer in favour of JC Jnr over Property 1.

These changes were made to the Minute of Agreement during the meeting of the 28 July 2016 when the Secondary Complainer and JC Jnr signed the Minute of Agreement.

6.10 The file holds a copy of a signed Minute of Agreement which states that the Secondary Complainer had agreed to grant JC Jnr an option to purchase Property 1 subject to a liferent in her favour and the sum of £150,000. In return for the option JC Jnr is obliged to pay £50,000 on 31 December 2016. The document states that JC Jnr will exercise said option by delivering an offer to purchase. The Minute of Agreement was signed by the Secondary Complainer and JC Jnr on the 28 July 2016. The Standard Security was signed by the Secondary Complainer on the same day. The file also contains a signed matrimonial homes affidavit signed by the Secondary Complainer. All the documents were witnessed by the Respondent.

6.11 The Respondent registered the Standard Security on behalf of JC Jnr, the applicant, in the Land Register. The Respondent registered the Minute of Agreement in the Books of Council and Session.

6.12 The Respondent secured the Secondary Complainer's daughters' agreement to act as her Attorneys on or around 1 June 2016. He registered the Power of Attorney with the Office of the Public Guardian, on behalf of the Secondary Complainer on or around the 28 July 2016.

6.13 The Respondent wrote to JC Jnr on 5 December 2016 confirming that the Standard Security in his favour had been registered in the Land Register of Scotland and that the "Option agreement" had also been registered. He advised he had written to JC Jnr's sister advising of the Power of Attorney. The Respondent acknowledged JC Jnr's request for a fee note and enclosed the same.

- 6.14 The Respondent's fee note was addressed to JC Jnr. The narration of the work done is as follows:

"Taking instructions regarding the arrangement between [the Secondary Complainer] and [JC Jnr]; drawing and engrossing Notice of Title in favour of [the Secondary Complainer]; drawing and engrossing Option Agreement between [the Secondary Complainer] and [JC Jnr]; obtaining same signed; drawing and engrossing Standard Security in favour of [JC Jnr]; having Notice of Title and Standard Security registered in the Land Register of Scotland and having Minute of Agreement registered in the Books of Council and Session; drawing and engrossing Continuing and Welfare Power of Attorney; obtaining same signed and having same registered with the Office of the Public Guardian; together with all meetings, posts, correspondence and incidents."

- 6.15 The Respondent acted for the Secondary Complainer in drafting the Minute of Agreement. He also acted in the interests of JC Jnr in drafting and registering the Standard Security. The execution of both deeds was carried out where the interests of JC Jnr and the Secondary Complainer were in conflict or least potentially in conflict.
- 6.16 The Secondary Complainer's and JC Jnr's positions now conflict. JC Jnr advised he has paid £70,000 leaving a balance of £130,000 to pay. The Secondary Complainer does not wish to make over Property 1 to JC Jnr.
- 6.17 Separate to the Minute of Agreement, Standard Security and Power of Attorney, the Respondent wrote on behalf of the Secondary Complainer to a neighbour about the neighbour shouting abuse at her asking for the behaviour to desist.

7. Having considered the foregoing circumstances, the Tribunal found the Respondent guilty of Professional Misconduct *in cumulo* in respect that he:

- 7.1 Acted in a conflict of interest situation on 28 July 2016 when he (1) acted for the Secondary Complainer regarding the Minute of Agreement and the Standard Security, (2) acted in the interest of JC Jnr regarding his interest in the Standard Security and thereafter (3) registered the Standard Security on JC Jnr's behalf all in breach of Rule B1.7.1 of the Law Society of Scotland Practice Rules 2011;

- 7.2 Failed to communicate effectively with the Secondary Complainer in that he did not set out in writing his advice on the consequences of signing the Minute of Agreement or the Standard Security, meaning that the Secondary Complainer did have the relevant information necessary to allow her to make an informed decision, all in breach of Rule B1.9.1 of the Law Society of Scotland Practice Rules 2011;
- 7.3 When presenting JC, who was unrepresented, with the Minute of Agreement, failed to inform him in writing that his signature would have legal consequences and that he should seek independent legal advice before signature in breach of Rule B2.1.7 of the Law Society of Scotland Practice Rules 2011; and in so doing,
- 7.4 Brought the profession into disrepute.
8. Having heard the Solicitor for the Respondent in mitigation, the Tribunal pronounced an Interlocutor in the following terms:-

By Video Conference, 19 January 2023. The Tribunal having considered the Complaint as amended dated 12 January 2023 at the instance of the Council of the Law Society of Scotland against Gordon William Tulloch Murphy, 12 Abercromby Place, Stirling; Find the Respondent guilty of professional misconduct in respect of breach of rules B1.7.1, B1.9.1 and B2.1.7 all of the Law Society of Scotland Practice Rules 2011; Censure the Respondent; Fine the Respondent in the sum of £1,500 to be forfeit to His Majesty; Find the Respondent liable in the expenses of the Complainers and of the Tribunal including expenses of the Clerk, chargeable on a time and line basis as the same may be taxed by the Auditor of the Court of Session on an agent and client, client paying basis in terms of Chapter Three of the last published Law Society's Table of Fees for general business with a unit rate of £14.00; Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent but need not identify any other person; and Allow the Secondary Complainer 28 days from the date of initiation of these findings to lodge a written claim for compensation with the Tribunal Office, if so advised.

(signed)

Beverley Atkinson

Vice Chair

9. A copy of the foregoing together with a copy of the Findings certified by the Clerk to the Tribunal as correct were duly sent to the Respondent by recorded delivery service on **9 FEBRUARY 2023**.

IN THE NAME OF THE TRIBUNAL



Beverley Atkinson
Vice Chair

NOTE

At the hearing on 19 January 2023, once the preliminary matters had been attended to, the papers before the Tribunal were the Complaint dated 12 January 2023, the Inventory of Productions for the Complainers, and the List of Authorities for the Complainers. Mr Pollock for the Respondent confirmed that the averments of fact and misconduct in the Complaint of 12 January 2023 were admitted.

SUBMISSIONS FOR THE COMPLAINERS

With reference to the Complaint, the Fiscal outlined the Respondent's conduct. The Complainers accepted that the principal instructions came from the Secondary Complainer and that JC Jnr did not consider the Respondent to be acting for him. However, in fact the Respondent acted for both when the Standard Security was signed and registered. The interests of the Secondary Complainer and her son were in conflict or there was at least a potential conflict. There is now ongoing litigation between members of the family regarding Property 1.

The Fiscal said that the Respondent had breached the Law Society Rules on conflict of interest. He had failed to communicate effectively with the Secondary Complainer. He should have advised her in writing of the consequences of the Minute of Agreement and Standard Security. His failure to do this meant she could not take an informed decision. He had also presented a deed to JC Jnr without advising him that signing it would have legal consequences and he might wish to take independent legal advice.

The Fiscal submitted that the Respondent's conduct was worse than that in Law Society-v-Morag Yellowlees (2019) which also concerned a conflict of interest. In the present case, the Respondent did not consider the conflict at all. However, there were similarities in that both cases involved a solicitor trying to help a bereaved family.

SUBMISSIONS FOR THE RESPONDENT

In answer to a question raised by the Tribunal, and with reference to the Minute of Agreement, Mr Pollock explained that if matters had proceeded to a conclusion, JC Jnr would have paid the Secondary Complainer £200,000 in total. This included £50,000 for the option.

The Respondent accepted that although instructions had initially come from the Secondary Complainer, at the time he registered the Standard Security, he was also in a client relationship with JC Jnr although

JC Jnr did not believe himself to be a client or consider that he was relying on the Respondent for advice. The Respondent accepted that the transaction was complex and that he ought to have followed up his oral advice in writing. It was not appropriate to rely solely on the conversations he had with the Secondary Complainer.

Mr Pollock noted that the agreement had various benefits for the Secondary Complainer. She needed company. JC Jnr and his family were going to move in with her. She had the protection of a liferent. All her fees were going to be met. The agreement was part-implemented. JC Jnr moved into Property 1 with his family. The Respondent is only before the Tribunal because that arrangement broke down. The Respondent failed to identify the conflict but once matters had progressed, he could not do very much about it. He carried out the instructions he was given. Mr Pollock was of the view that the conduct in the Yellowlees case was worse than the behaviour in the present case.

DECISION

The Tribunal was satisfied beyond reasonable doubt that the Respondent had acted in the manner set out in its findings in fact. The Respondent acted in a conflict of interest situation when he acted for both parties in relation to a Minute of Agreement and Standard Security. The Secondary Complainer and her son required very different advice. It was for the Respondent to identify this and act. He did not explain his advice to the Secondary Complainer in writing. It would have been appropriate to do so in the circumstances of this case which involved an unusual transaction and a significant amount of money for the Secondary Complainer. The potential outcomes for the Secondary Complainer were serious. The Respondent presented the Minute of Agreement to JC Jnr without informing him in writing that his signature would have legal consequences or that he should seek independent legal advice before signature.

Solicitors must not act for two or more clients in matters where there is a conflict of interest between the clients (Rules B1.7.1). Solicitors must communicate effectively (Rule B1.9.1). They must not present deeds to unrepresented parties without giving them certain information in writing (Rule B2.1.7). The Respondent breached these rules. Breach of rules may constitute professional misconduct.

According to the definition of professional misconduct contained in Sharp v Council of the Law Society of Scotland 1984 SLT 313,

“There are certain standards of conduct to be expected of competent and reputable solicitors. A departure from these standards which would be regarded by competent and reputable solicitors as serious and reprehensible may properly be categorised as professional misconduct. Whether or not the conduct complained of is a breach of rules or some other actings or omissions, the same question falls to be asked and answered and in every case it will be essential to consider the whole circumstances and the degree of culpability which ought properly to be attached to the individual against whom the complaint is to be made.”

Having regard to all the circumstances of the case, the Tribunal was satisfied that *in cumulo*, acting when the clients’ interests were in conflict, failing to communicate effectively with the Secondary Complainer in writing and failing to issue a letter to JC Jnr under Rule B2.1.7 constituted a serious and reprehensible departure from the standards of competent and reputable solicitors. The Respondent was therefore guilty of professional misconduct.

The Fiscal confirmed that there were no previous conduct findings on the Respondent’s record card.

SUBMISSIONS IN MITIGATION

Mr Pollock said the Respondent had the respect of his clients and peers during his lengthy career. There were no other disciplinary findings against him. He is now retired. The conduct occurred in 2016 and the complaint to the Scottish Legal Complaints Commission was made in 2019. The Respondent provided all relevant information during the process. His cooperation meant that it was not necessary for the Tribunal to hear evidence.

Mr Pollock noted that this was a case where instructions came first from the Secondary Complainer. The Respondent acted in good faith, although he had made a mistake. There was no significant personal benefit to him. He placed too much trust in his long relationship with the Secondary Complainer. The agreement between the Secondary Complainer and her son was part implemented but has now sadly disintegrated.


Mr Pollock invited the Tribunal to treat the Respondent leniently and suggested that a censure was the appropriate sanction.

DECISION ON SANCTION

The Tribunal considered the aggravating and mitigating circumstances. The behaviour fell at the less serious end of the scale of misconduct. The Respondent was now retired. There were no public protection issues arising. The Respondent had cooperated with the Law Society and the Tribunal. The conflict had arisen due to his attempt to assist a family with a difficult situation. It appeared to be a one-off incident. The Respondent did not have any disciplinary record. Taking all these circumstances into account, the Tribunal censured the Respondent and fined him £1,500.

The Fiscal moved for expenses. He indicated that he had spoken to the Secondary Complainer and had no submission to make regarding publicity. Mr Pollock had no submission to make regarding expenses. He was aware of the way the Tribunal usually dealt with expenses. The Respondent preferred that the matter was not given publicity if possible.

The Tribunal decided that the appropriate award of expenses was one in favour of the Complainers. The Tribunal ordered that publicity should be given to the decision and that publicity should include the name of the Respondent. However, there was no requirement to identify any other person as publication of their personal data may damage or be likely to damage their interests. The Secondary Complainer will have 28 days from intimation of these findings to update his claim for compensation if so advised.



Beverley Atkinson
Vice Chair